

Montana Transportation Commission

July 28, 2005 meeting

Thee Garage ~ 19 W Montana Avenue, Baker MT

In attendance:

Bill Kennedy, Transportation Commission Chair
Nancy Espy, Transportation Commission Vice Chair
Kevin Howlett, Transportation Commissioner
Rick Griffith, Transportation Commissioner
Deb Kottel, Transportation Commissioner
Jim Lynch, Director –Montana Department of
Transportation (MDT)

Jim Currie, MDT Deputy Director
Tim Reardon, MDT Chief Counsel
Loran Frazier, MDT Chief Engineer
Ray Mengel, MDT Glendive District Administrator
Mike Duman, Assistant FHWA Division Administrator
Lorelle Demont, Commission Secretary

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Welcome and introductions

Commissioner Espy went over some statistics about eastern Montana. As you saw yesterday, we live in some beautiful country. Espy referred to the sheets she distributed showing the areas eastern Montana ranks very high in (compared to the entire U.S.): durum wheat is second; black seed is second; spring wheat, third; coal, sixth; sugar beets, sixth; pinto beans, eighth. Within our own district, Fallon County and Richland County, we are producing about 62 percent of the oil that's produced in the state of Montana. Rosebud County is producing 37 percent of the coal. Garfield County has the distinction of discovering the first T-Rex ever found.

Commissioner Espy asked Ray Mengel to show where the current projects are in the district. Mengel said we have been very successful the last few years in developing projects on US 212 in the southern corridor. We have reconstruction, resurfacing, and bridge replacement projects scattered all over the district.

Commissioner Espy referred to another handout that showed the different number of miles of highway in each district. In district 4, we have 171.7 miles of interstate, 864.6 miles of NHS, 848.2 miles of primary, 1446.3 miles of secondary, and 10.2 miles of urban. Our district consists of 46,871 square miles, and our land area is greater than 18 of the states.

Chairman Kennedy thanked Nancy Espy, Donny Rieger, and the county commissioners for the hospitality we've had in district 4. He called the meeting to order at 8:08 am.

Currie noted that Sandy Straehl had remained back in Helena to work on reauthorization and that he would be handling her agenda items.

After staff introduced themselves, the microphone was passed around the audience:

Joan Stahl, Rosebud County Commissioner
Mark Rehbein, Richland County Commissioner
Donny Rieger, Fallon County Commissioner
John Ostlund, Yellowstone County Commissioner
Erin Lutts, Mid-Rivers Communication and representing the Highway 323 Steering Committee
John Thielen, citizen from Billings in Yellowstone County
Bob Herps, citizen from Baker
Dennis Wohler, citizen from Ekalaka
Dennis Afrank, Fallon County Commissioner

Ray Mengel, MDT Glendive District Administrator (district 4)
Clayton Horning, Mayor of Baker

The pledge of allegiance was followed by an invocation offered by Commissioner Howlett.

Agenda item 1: Abandonment of a portion of Danford Drive, Yellowstone County

Reardon offered some history prior to addressing the matter at hand regarding Danford Drive. Back in the 1960s, there were plans to build a frontage road from Billings to Laurel. During the time the department was purchasing right-of-way, we lost a necessity hearing in the district court and did not pursue that. Eventually the frontage road was built on the other side of the Interstate. We hung on to that property. The property was later subdivided with misinformation as to the land ownership. Somewhere along the way, and nobody has really stepped up to the plate to explain how that happened, the purchasers believed they were acquiring included the “green area” on the map which belonged to MDT. They paid taxes on it, they fenced it, they used it for access. For 40 years, they thought they owned the land. Nobody caught the fact that the state of Montana owned that land. The first time this came to my attention was about two years ago when we got a petition from the landowners. Recent title searches prompted by landowners pursuing second mortgages had revealed the state’s ownership of the land. Whether the ball was dropped by the developer, their survey, the title company, the county, or a combination of people, all of this transpired and all of this property was subdivided with misinformation as to the ownership of the land.

After being petitioned by the landowners, we tried to find ways to see if we could get rid of this property. By individual parcel, it amounts to very little ground...I think the biggest amounts to about 1,000 square feet. When we looked at the statutes, we couldn’t find any way to dispose of this property, ensure that these people got it, and wouldn’t cost the state of Montana quite a bit of money. In order for us to sell excess real estate, under the law prior to 2005, we had to do an appraisal and hold a public sale. We probably would have to have surveyed the area too. We were looking at three to four thousand dollars per parcel to sell very small pieces of property. The only people that have access to it are the people that own the lots on the other side. We couldn’t give it to them under existing law because we must either sell it or abandon the entire right-of-way. The county did not want us to completely abandon the right-of-way because of the county road they maintain. We investigated the possibility of transferring the property to the county. That wasn’t going to work either because the county had the same problem: they couldn’t dispose of it any easier than we could without going to a public sale.

We made the decision to go to the legislature to see if we could get it fixed. Susie Rebeck, a staff attorney, and Shane Mintz of our right-of-way staff worked with Representative Penny Morgan of Billings to craft a statute to allow the department to dispose of excess land under very limited circumstances like this. We have to make some very specific findings in order to do that:

- The first is that we no longer need it for highway purposes.
- The second is the notification of all affected parties and the requirement to hold a public meeting.
- We have to make a decision that either Federal Highways will not require reimbursement for the federal funds that were expended to purchase this land, or the Transportation Commission has to agree to pay that money back if they decide to abandon the property.

The bill passed quite easily.

This property meets these three requirements. We don’t need the property; we have notified Yellowstone County and the affected landowners; it was going to cost us \$3,000 – 4,000 to sell each parcel, and the parcels were worth about \$1,000 to \$1,500 so the state would lose money on a sale. It also makes no sense to hold a public sale, and lose money on

the sale, to sell property that nobody else can get to. More than anything, this is an equitable result for these landowners.

What I'm asking you to do today, is 1) to abandon these sections of property, 2) to direct the dept to officially notify Yellowstone County of the commission's intent and 3) appoint a hearings officer to conduct the public hearing. We recommend Mr. Mintz.

After the hearing, it's my expectation that at your next regularly scheduled meeting, we will ask you to enter a final order of abandonment. It will revert to these adjacent property owners individually. We will file an exhibit with the clerk and recorder's office in Yellowstone County that will discharge every interest the state of Montana in this property.

Reardon recognized the frustration the landowners have experienced with this.

Chairman Kennedy invited John Thielen to speak. Mr. Thielen of 5078 Danford Drive, Billings MT described how he purchased property on Danford Drive in 1968 and the deeds were clear; the lot showed no encumbrances whatsoever at the time. He described how he had landscaped the property and there is also a well house on it. I've paid taxes on it for 36 years. When this surfaced about two years ago, we tried to resolve the matter the easy way, by going to the county. As you can see, we weren't able to resolve it that way. He thanked the commission for their time and effort.

Yellowstone County Commissioner John Ostlund said this is one of those occasions where the public has been wronged and we have an opportunity to fix it. John brought the issue to us and we researched it and found out the ownership issue. We did what we could do, which is to refund five years of taxes. But these folks have paid 35 years of taxes. We hope the commission will be able to right this wrong that we have not been able to do.

Chairman Griffith asked how much funding from FHWA was expended on the acquisition. Duman said we looked at what records we could find, but they aren't readily available. Part of our response back was there was a relinquishment decision by the federal government which would suggest we got "out of the game" at some point in time. That combined with the economic impact to the landowners, it was our decision not to seek reimbursement or repayment.

Reardon said this situation is rare. We truly expect this to be an aberration. We don't often abandon property.

Commissioner Howlett moved to accept staff recommendations to approve the abandonment of Danford Drive and to direct staff to proceed with the necessary actions to make the abandonment final; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Chairman Kennedy commended Mr. Thielen for his dogged determination in following this through to this point when it would have been easy to have given up. He noted that Representative Penny Morgan carried the legislation for this bill and unfortunately she couldn't be here with us today.

Agenda item 3: Orange Street Bridge in Missoula – deck sealant project

Currie – you have before you a request from the city of Missoula to use some of their urban funds for a deck sealant on the Orange Street Bridge. Urban funds are allocated to the cities and they have authority to direct how the funds are spent.

Commissioner Griffith moved to accept staff recommendations to approve the addition of this project to the program; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 4: Wetlands projects

- a. Upper Clark Fork Wetland Mitigation Bank (near Helmville in Powell County)
- b. DH Ranch Wetland Mitigation (south of Laurel in Carbon County)

Currie explained that when we build a project that involves a wetland, we are required to:

- Avoid impacting the wetland.
- If it cannot be avoided, minimize impacts.
- Mitigate impacts on site.
- If on-site mitigation is not feasible, we must mitigate impacts off-site at a higher ratio than what was impacted; this must be done in advance of project construction.
- Mitigation projects must be within the same watershed as the wetlands impacted.

The goal is a zero impact on wetlands.

Commissioner Griffith moved to accept staff recommendations to approve these two wetlands projects; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 5: Culvert repair study on MT 200 near Noxon (Sanders County)

Currie said there are two culverts on MT 200 near Noxon appear to be failing. What we propose to do is go up there and do an analysis of the culverts, find out what's going on and what needs to be done in order to correct it. We are requesting PE authority in the amount of \$62,500 to pay for this study.

Commissioner Howlett moved to accept staff recommendations to approve the completion of a preliminary engineering study of the two failing culverts using STPP funds; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Agenda item 6: Enhancement projects on MDT right-of-way

- a. College & Huffine Path – Bozeman
- b. Oilfield Avenue Path – Shelby
- c. Landscaping – Broadus
- d. Sidewalks & Landscaping – Missoula
- e. Welcome Signs – Butte

Currie explained that the enhancement program is a small funding source in the federal program used for enhancing transportation facilities. It is fairly broad and can be used for bike/ped paths, landscaping, historic lighting, and even has been used for historic restoration. For example, a few years ago, counties donated monies for the restoration of the capitol building in Helena. Projects on or near MDT right-of-way need commission approval.

The *Welcome Signs – Butte* project will place welcome signs and landscaping at the four Butte interchanges. Two of these, the Montana Street interchange and Harrison Avenue interchange, have no place to put the signs outside the interstate right-of-way. At this point, we do not have concurrence from Federal Highways on whether they will allow welcome signs on the interstate right-of-way.

Currie said staff recommends approval of the five projects with a caveat that FHWA would allow the two Butte welcome signs within the interstate right-of-way.

Commissioner Griffith asked if it was a safety issue. Currie said it could be if the signs are in the clear zone. He said the interstate right-of-way is a fairly pristine right-of-way throughout the state of Montana; there are typically no signs in the right-of-way. This would probably be setting a precedent. Commissioner Griffith said if it is a safety question, could that be mitigated so that the posts will break away if impacted? Currie said we have signs all over the interstate and all the posts are designed to break away in the event they are impacted.

=> Lynch said the department will work with FHWA on this request. We will work as Butte's advocate, as we would any community, and do whatever we can to facilitate their request to beautify the entrance to their community.

Commissioner Howlett, recognizing that this would be precedent setting, suggested a policy be formulated to address future requests. => He encouraged FHWA to come forward with a broader policy that could be used on a statewide basis. There will be other communities that face the same geographic or other constraints.

Commissioner Espy went on record as supporting the motion however she planned to abstain from voting on the item. Lynch clarified that Commissioner Espy did not have to recuse herself from voting because one of the projects was in her district; only if she had a personal interest would she need to do so.

Commissioner Espy moved to accept staff recommendations to approve the five CTEP projects; Commissioner Griffith seconded the motion. Commissioner Kennedy clarified that the approval would be contingent upon the Federal Highway Administration allowing the welcome signs within the interstate right-of-way. Frazier noted that there have been other similar requests, such as at the entrance to Billings. => Chairman Kennedy asked staff to bring a policy back to the commission at their next meeting. All five commissioners voted aye.

Agenda item 7: Lane reconfiguration and bicycle/pedestrian enhancements on Broadway Street in Missoula

We initially brought this to you in 2000 requesting money to do a study of the area and evaluate options for improving pedestrian safety. This has been a rather controversial project in the city of Missoula, with a significant contingent supporting leaving it the way it was, and another significant contingent supporting a three-lane configuration. For a long time, the local government was divided and couldn't come to a consensus on what they wanted us to do. As a result, this project has been around for some time.

They are now supporting the three-lane configuration, as do we. We believe it will be much safer and will help with a serious pedestrian safety problem there. There have been a number of injuries and fatalities since the project was nominated in 2000. I believe we need to move forward, especially since we now have the concurrence of the local government. The project will cost approximately \$313,000.

Commissioner Howlett moved to accept staff recommendations to approve the addition of this project to the program using CMAQ funds; Commissioner Griffith seconded the motion.

Lynch stated for the record that there are groups within Missoula that do not agree with this. All five commissioners voted aye.

Agenda item 2: Morning Star Drive project

Evelyn Roundstone thanked the commission for hearing them, and introduced the delegation from the Northern Cheyenne Tribe: Eugene Limpy, TERO director; Jacob Kabul, data entry technician; and Cindy Russell, compliance office; and Mike Addy, who is with the BIA Rocky Mountain regional engineering office.

Cindy Russell distributed a copy of the Northern Cheyenne's 2004 request to the Transportation Commission regarding Morning Star Drive.

Roundstone explained that the tribe was selected to receive a Montana Air Congestion Initiative (MACI) discretionary grant for PM-10 reduction on Morning Star Drive which runs through the middle of Lame Deer. Since there are three new commissioners, she went over the basic facts as they had been previously presented:

1. The tribe would realize the greatest economic benefit by entering into an MOU with the BIA for this project using force account crews.
2. The TERO fees would not apply to the project.
3. No mobilization costs since all the equipment and labor is on the reservation.
4. The BIA does not have a profit motive.
5. The 30 percent that's commonly added to private contractors would not be applicable to this project.
6. The unemployment rate has not ever changed so it would open up jobs for some of the tribal members.
7. This would be done by force account which would be mostly native American.
8. The BIA has quality controls which are similar to the state's quality controls; they either meet or exceed the state's standard specifications for construction of roads and bridges.
9. The BIA has a construction budget.

She said the tribe will obtain the 13.42% match from Indian Reservation Road (IRR) construction funding, which is a federal funding source. She quoted Governor Brian Schweitzer that "it's a new day in Montana" and asked that the commission seriously consider the request that's been presented. Last year's decision has not been acted upon by the tribe or the state. Roundstone said we as a tribe have always been very cooperative in our MOUs, e.g. on Highway 212 which transverses the reservation. She offered to answer any questions or speak to concerns.

Hal Fugelvand, president of EH Oftedal & Sons in Miles City, MT, stood to oppose this proposal and this process. He said we strongly recommend that any highway project use the standard competitive bid process. We feel that bidding process is a tried and proven method, and the most effective way to administer highway contracts. He said we do not apply any fee or cost as was previously stated (30 percent). We never apply any percentage like that. As far as benefiting the tribe, we understand the main concern is to provide employment for people on the reservation, and we have no problem with that whatsoever, and have used the TERO agreements and hired native labor per the TERO agreement when building projects on the reservation. The last point I'd like to make is that this is a dangerous precedent that could be set. This isn't a one-project deal; this could be tried to be used in several other applications.

Cary Hegreberg, executive director of the Montana Contractors' Association, stood to represent construction firms around the state. We opposed this proposal a year ago and would like to reiterate our opposition to this concept. We believe very strongly that the traveling public and taxpayers of the United States and the state of Montana benefit from competitive bidding construction projects. We believe the commission would be going down a slippery slope and setting a bad precedent by awarding this project to the BIA. There are numerous tribes around Montana and there is a lot of construction slated to go forward on the various reservations, and allowing this project to go force account to the BIA we think would be a very bad precedent that could become rampant throughout the state.

There is, however, some precedent for doing these kinds of projects; one recent being the Pryor Road south of Billings. Before you award this project to the BIA, I strongly encourage you to do some research and investigation as to the progress of that project and costs. We're told that it spanned four construction seasons to complete that project. Private contractors tell me that they could have gotten that done in one construction season. We question what the real true cost of that project really was to the taxpayers. We are not opposed to tribal government forming construction companies, securing a bond, and bidding projects. We think that's feasible; we think it's doable, and we would certainly enter into any kind of competitive bidding situation under those circumstances. In fact, we'd welcome a tribal construction enterprise into our membership in the Montana Contractors' Association.

It was referenced earlier in the conversation about the commonly applied 30 percent fee. That was attributed in the original letter that came to the commission and to the department to the "the rez factor." A year ago, we asked what that meant and have not received an

answer; we would still like to know the answer. Our members are still very perplexed by that allegation that contractors regularly apply a percentage or an increase in their bids to account for what was attributed as “the rez factor.” Our members don’t agree with it.

We oppose awarding this project to the BIA. We think competitive bidding is always going to be a preferable way of building projects. Some of our members have expressed some concern as to why we’re back here again: if this project was important, why wasn’t it built? It is more important that it go to the BIA? Is the tribe willing to forego the project altogether rather than letting it be awarded through competitive bidding? It makes us wonder how important the project really is if that’s the case.

Eugene Limpey said he was recently hired as the TERO director and has been there three months. He explained that this road runs right next to the Lame Deer public school. In 1972, the US Supreme Court ruled on the air quality standards that the tribe had filed, and the air monitoring station showed there was a dust problem. This project is for the safety of the children. It’s been on hold for four years and the amount of the project is under \$6,000 [sic]. It is a small project; half a mile of construction. We as the new staff would like to have this project completed and not have that money continue to sit up in the state government. We agree with the contractors of Montana that it would be really nice for one of them to get the contract and pay the three percent TERO fee; our tribe needs that money. We’ve looked at options, however, but at this stage in time, we don’t want to see that money sit there while these children continue to inhale this dust. We’ve met with the Billings area BIA office people, and if this money is released from the state to the tribe, their staff is ready to do the project this fall. We found an MOU that was in place but has now expired. We intend to bring the MOU before the tribal council and renew it and bring it to Helena to Mr. Lynch’s office. There is a misprint on that 30 percent that was on that sheet of paper that was read by Evelyn. There is no 30 percent fee; it’s just a three percent TERO fee that applies to every construction project that comes on the reservation.

Michael Addy from regional BIA office said, looking at the plans, this is a doable project for this year. We have a force account crew in place on the Northern Cheyenne; we have a curb and gutter machine; pavers, and gravel crushing machinery. We follow Montana’s best management practices for erosion and sediment control. We have the personnel and equipment nearby, whereas a contractor would have to mobilize to the site.

Kennedy expressed concern about the project that has set for four years [Pryor Road]. He asked for clarification from the delegation as to which is more important: do you want the project done this year, or do you want the BIA to do the project? Roundstone said the priority is to get it done. Kennedy said if the BIA wasn’t there ready to do the work, would you ask us to let it to bid so it could get done this year? Roundstone said yes, because they want to get it done.

Kennedy said he is the commissioner that pushed to get the Pryor Road done. He was very disappointed in the BIA’s performance. Work stopped and started; work had to be redone. Kennedy asked Addy how the BIA knows the work can be done this year, and he asked what guarantees the BIA could offer. Addy suggested a memorandum of agreement that specified time frames.

Addy said there are a lot of issues on Pryor Road. He said there is a whole different force account on Pryor Road than there is in Lame Deer: they are Crow; this is Northern Cheyenne. There has also been a complete reorganization in the regional office of the BIA, and we are doing a much better job of establishing and procuring materials quickly. Addy was interrupted by the following phone call.

Update on reauthorization

At this point, Senator Max Baucus called via conference telephone to provide an update about the highway bill that we will operate under for the next four years. Baucus explained there will be a 60-40 split on project earmarks named by the House and Senate. The Senate cares much more about the formula; the House cares more about projects. This is a good thing for Montana. He thanked the team in DC led by Kathy Ruffalo and Sara Elliot, and

the DOT team: Sandy Straehl and Jim Skinner. He said it's been a huge push the last five weeks, and that it's "always, always teamwork that gets things done."

Addy thanked the commission.

Commissioner Howlett shared some observations and questions. We dealt with this issue about a year ago in this very room. I like to think I can stay focused on the objectives, which are to get the roads done and to employ people. In dealing with the native people of this state, there are different rules and laws. They are not there because somebody decided that they wanted to do something a little bit different; they are there because the people who made the laws recognized there are some unique things that need to be included in the laws applying to the native people of the state. It's probably one of the more tragic things in this state that most people in this state do not understand an awful lot about dealing with tribal issues and federal laws and the relationships that take place. I think testament to that is this Indian education for all that's taking place now across Montana. There are some things in the Montana constitution that guide and direct that. One might say what does that have to do with the issue in front of us? It has everything to do with the issue in front of us – it's understanding, and coming to understand and implement to the best we can the opportunities we have to embrace all people in the state with all the laws, rules and regulations, and policies. It gets complex at times, extremely complex. I tried to articulate this last year at this meeting.

Commissioner Howlett spoke to Cary and the contractors. I appreciate the hard work they do. They're doing a \$100 million on my own reservation in western Montana; a lot more work is scheduled across this state. This project in no way threatens that. I do not believe a project of this magnitude is going to deprive the contractors of a livelihood. I think what it does is tries to encompass the opportunities that are there for this transfer. I share Mr. Kennedy's concerns about past experiences, but I remind us all we don't want to look too hard in the rearview mirror when we look at competitive bidding after what we saw yesterday on a competitively bid project [referring to the Secondary 323 project where the contract was terminated.]

Commissioner Howlett asked Frazier if the work could be done this year using competitive bid. Frazier said no; it would probably be done next spring. Commissioner Howlett confirmed with Add that the BIA could get this project done this year. Commissioner Howlett said the tribe's desire is to get it done as expeditiously as possible. I think the thing to do is to do this as a precedent. The precedent is really outside the scope of what the legal authority to do is right now. The legal authority is there to transfer the money, by public law. There is no state match in this. You are going to use BIA IRR funds as the match. There is no financial liability to the state on this project. Commissioner Howlett asked Addy if he would be willing to sign, or take to his superiors a recommendation to sign, an agreement to get this road done to the state's specifications. Addy said yes.

As we begin to deal with more and more of these issues, I think we have to have some understanding of the framework and I believe that is what Commissioner Espy and I had hoped for in the establishment of the Tribal Relations Committee that we would begin to identify those issues that seem to be characteristic of doing public jobs on Indian reservations. There are some issues that will need some research. I don't know whether there's a 30 percent factor; I know what some of the issues are from my experience being a tribal council member, but I think those are issues we need to begin to work on in terms of long term training program, establishing some boundaries for the transfer of these programs with certain thresholds and the quality issues that we've addressed as a matter of policy. But this one in no way do I believe to be ought not be not considered at this point because in my mind, one, it could get one if the Bureau of Indian Affairs does it; two, the legal instrument is there; three, there is no impediment to the state; fourth, if the state were to do it, it cannot get done this fall; fifth and foremost, it is the tribe's desire to get it done as expeditiously as possible.

Reardon asked for guidance as to what the commission's intent is for the terms for an additional MOA with the BIA. I've heard concern about completion dates, guarantees. The

requirement to conform to the standard specifications is pretty easy to do, the QAQC on materials and all that kind of stuff, contract administration, lab testing, all those things we can do. I don't know what else you have in mind. We don't necessarily put guarantees in any contract but we have other means of addressing issues for delay, such as liquidated damages. I'm not sure what authority the BIA has to commit to that today. I need some guidance.

Commissioner Howlett said his intent was not to impose any additional provisions that we would impose on other contracts. It simply needs to be very clear that let's not take four years to do a six-month project. Chairman Kennedy said it's not a six-month project. Reardon said I appreciate what Commissioner Howlett said, which is to treat it as any other contract. But there are some things in "any other contract" that I don't know if you want to impose or if the BIA can legitimately contract away. Are we going to require a bond? Are we going to have liquidated damages? Jurisdictionally, if there are issues, it's going to federal court.

Commissioner Kottel said the commission should not micromanage the contract; that should be left up to the staff to develop. They are a sovereignty, I think it's very different than when we contract with a private contractor. I think we need to recognize that we are dealing with another sovereignty and give that sovereignty the respect to finish the project as the federal government gives us, the state of Montana, when it pushes funds to us for our highway dollars.

Lynch said he would contribute to the discussion and then present the department's recommendation, which wasn't in the commission agenda. I think the offer to do a memorandum of understanding or PSA – a project specific agreement – was a good offer, but, on a practical level, is almost an impossibility for the Bureau of Indian Affairs to deal with. One thing we need to recognize is the BIA is a federal agency, and if the commission chooses to transfer monies over to the BIA, they're the responsible party from that day forward, not the Montana Department of Transportation. It is not like giving money to the county or to a tribal government in which case we would be the responsible party and we would have to make sure that federal standards were met. The BIA, as a federal agency, is going to be under the same requirements that MDT is on the funds that they spend. It would be their project.

Lynch acknowledged the concerns brought forth by the commission, the contractors, and the tribe. They're legitimate. I think the comments brought forth by the Bureau of Indian Affairs and the representatives of the Northern Cheyenne were also legitimate. This is their land, this is their community, and they are concerned for the safety of the people that are moving up and down their roadways. You know, this is an off-system road. It is not a road that the state has any liability for in the future in terms of maintenance. This is their road once it's constructed and done. It's a little bit of a different situation than what we would see where the majority of state funds are being spent.

I want to comment on "the rez factor". As the director of the department of transportation, and the first one you've ever had that's been in the construction business, I can tell you that I've had the opportunity to personally bid and figure the costs on several projects on reservations in Washington, Oregon, Idaho, and also the Salish Kootenai in Montana. With the companies that I represented, there has never, ever been a "rez factor" or anything that we would have added to a project because we were working within an Indian reservation. I appreciate the comments from Hal Oftedal that his company doesn't do it either. In saying that, I'm not going to tell you that there might be a company that did. But I can tell you this, if there are, they don't get the job. The majority of companies out there are good companies that understand the value of construction and what it takes to do a good job, and understands what it takes to communicate and work with the local communities, and reservations are no different. Part of doing a project is figuring how to work with the local government, be that city, county, or tribal.

I have also had the opportunity to work with different Bureau of Indian Affairs offices and construction crews. There are good roads within the state of Montana that are being built by

the BIA. For example, I've driven on several roads up by Browning within the Blackfeet Reservation that are very nice roads. Now, there may be some that aren't very nice. By the same token, we have the same issues with private contractors. I don't think it's fair to say that we have a problem with BIA work without saying we don't have a problem with private sector work.

I think we have to get back to what's going on here. This request was given to this commission a year ago. The commission at that time decided that there was going to be a new administration and three new commissioners, that there may be a new idea and a new take on what's going on. The Bureau of Indian Affairs offices and bureaus, their work forces have changed since that time and the commissioner at that time decided not to do anything to allow you guys right here to make that decision. Loran is right, in order for us to get a project built, we would need to get a memorandum of agreement and a project specific agreement, and we would be remiss to tell you we could get this thing out to bid and built this year. Can the BIA get it done this year? Really, it's their call, and I don't if they can because I don't know what their procedures are in how they do their work.

We couldn't give you a recommendation before the meeting because we didn't know what we would be faced with today. There could have been one of three possible requests: one, we could have been asked to give the money to the Northern Cheyenne, which under our federal and state guidelines, that's a recommendation we would not have approved of. The second one is we could have passed the money to the BIA and let them administer this project and build this roadway. And the third one would be for us to build the road. Lynch spoke to the issue of setting precedent. A lot of people use that for a lot of different reasons. If you like the idea, you're going to stand hard on "you set a precedent." If you don't like the idea, you're going to stand hard on saying "don't set a precedent". The reality is, as Kevin says, these jobs are very unique and whether this is here or in Hamilton, I think it would be very difficult for this commission to set a precedent on this type of request. When you consider the uniqueness and the purpose and the need, and the specific circumstances of this situation, I recommend that the commission transfer the funds to the Bureau of Indian Affairs for the construction of the project on Morning Star Drive in Lame Deer. I'm sure the Northern Cheyenne are very aware of what they'll be held accountable for, and I'm sure the BIA will construct a quality road.

Duman said we are in a climate of rapid change with reauthorization. I'm not sure how the rules will change as we move forward. Part of our discussions historically on mechanisms for how the Montana Department of Transportation would make monies available for any other federal agency – and they have that authority under law – has been through an agreement. As it exists right now, MDT would have to enter into an agreement with the BIA on the use of the funds. Issues such as cost overruns would need to be addressed in the agreement. Lynch said the agreement would be similar to the agreement that FHWA has with MDT.

Chairman Kennedy expressed concern about setting any type of precedent. I hope that if we move forward that the BIA gets this project done quickly and meets the needs of the Northern Cheyenne Tribe. That's the number one concern: getting the road done so it's safe for the kids. The concern that I do have for the future is one that the contractors also have. If the BIA is on that reservation and we automatically give projects to them, we take competition out of the process. Complacency has been the biggest problem, not just with the project I've worked on but with projects around the state. The number one concern I'm going to vote on today is the timeline. I would like to enter some kind of discussion between the tribes, the administration and the contractor's association to look at how do we get more of these projects more competitive and contractors out there. The tribal government shouldn't have to wait four years to get a project going when the money is already sitting there. Their concern, as presented today, is not whether or not this goes out to competitive bid or not, but how to get the project done soon. As part of the discussions, I'd like to look at the need for employment for tribal members; how do we all work together in this and make it a win-win for everyone. On this particular road, I think it has been bounced around so many times, I think something needs to happen today for you. There are some other questions out there that need to be addressed.

Commissioner Griffith said one issue about setting precedent is that this project involves a PM-10 standard. Dirt roads are a primary reason for a PM-10 problem; this is a dirt road. That probably gets us over the issue of precedent. It is expedient to deal with that.

Commissioner Espy moved to support the recommendation of staff (to transfer the funds to the Bureau of Indian Affairs to construct the project this construction season using force account crews) and proceed with this recommendation as quickly as possible; Commissioner Howlett seconded the motion. All five commissioners voted aye.

Agenda item 8: Increased project scope and cost

Commissioner Griffith moved to accept staff recommendations to approve the increased scope and cost for project NH 11-1(43)43 for turn bays south of Livingston by Pine Creek Road; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 9: Speed limit studies

Frazier summarized the recommendations for special speed limit zones for the following:

Old US 10 (X 31011) in Mineral County

X-31011 runs east and west of the Interstate 90 Haugan Interchange.

- ❑ A 45 mph speed limit beginning at the west end of the route and continuing east to the west end of the Lincoln Silver Dollar turnout, an approximate distance of 1.0 mile.
- ❑ A 35 mph speed limit beginning at the west end of the Lincoln Silver Dollar turnout and continuing east to the Interstate 90 Haugan Interchange, an approximate distance of 0.4-mile.
- ❑ A 60 mph speed limit beginning just east of the Interstate 90 Haugan Interchange and continuing east to the end of the route, an approximate distance of 4.1 miles.

X-31203 (entire route)

X-31203 is located between the communities of St. Regis and Superior.

- ❑ A 60 mph speed limit beginning at the Interstate 90 Slow Way Interchange and continuing east to the end of the route just beyond the Interstate 90 Dry Creek Interchange, an approximate distance of 5.5 miles.

X-31070 (entire route except w/ Superior)

X-31070 begins in Superior and continues east.

- ❑ A 60 mph speed limit beginning at the end 45 mph speed zone for the community of Superior and continuing east to the Interstate 90 Tarkio Interchange, an approximate distance of 14.3 miles.

US 12 – Miles City (Custer County)

- ❑ A 45 mph speed limit beginning at station 3+70, project FAP 86(15) (the intersection with Valley Drive) and continuing east to station 24+00 (250 feet from Sanjel Inc.), an approximate distance of 0.4 of a mile.
- ❑ A 55 mph speed limit beginning at station 24+00 and continuing east to station 93+00 (700 feet east of the eastbound I-94 interchange ramps), an approximate distance of 1.3 miles.

MT 117 – Community of Fort Peck (Valley county)

- ❑ A 50 mph speed limit beginning at the intersection with MT 24 and continuing east to milepost 1.0, a distance of one mile.
- ❑ A 40 mph speed limit beginning at milepost 1.0 and continuing to the station 42+00, project FR 17-1(1) (the north edge of Park Grove), an approximate distance of 2.84 miles.
- ❑ A 50 mph speed limit beginning at station 42+00, project FR 17-1(1) and continuing north to 52+00, an approximate distance of 1,000 feet.

Commissioner Howlett moved to accept staff recommendations to approve the special speed zones as presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Communication with local governments

Chairman Kennedy recognized the representatives from Fallon, Carter, Yellowstone and Richland and Rosebud Counties.

Richland County Commissioner Mark Rehbein talked about Secondary 201 northwest of Sidney, which is a main artery road that's getting heavy use from the oil industry. It can't stand the loads that are being put on it. When we visited about the secondary roads this spring, it was suggested that we ask the other counties to reorder the district priorities. We don't feel that's fair and would like the state to come up with another solution.

Mengel explained that this road is eligible for secondary road funds, but these have already all been obligated. We have put in over \$100,000 in maintenance costs this spring trying to keep the road together. Commissioner Espy asked what preventive measures the state has taken to preserve the road and prevent further deterioration. Mengel said during the spring thaw we also put a speed limit and load limit on the road, but the oil field traffic is so heavy, the road is still damaged.

Rehbein said the traffic count on the road is in excess of 50 trucks per hour, both loaded and unloaded. Secondary 261 was established as the county priority a number years ago, before the oil boom hit. Mengel estimated it would cost \$7 million to reconstruct the worst eight miles of Secondary 201.

=> Chairman Kennedy asked Lynch to take this back to staff and bring a response back to the commission at their next meeting.

Brett Smelser, mayor of Sidney, asked that the commission give consideration to a bypass or truck route to connect MT 16 South to Highway 16 northwest of Sidney. We don't have a truck bypass in Sidney. We have a farm to market road that has been signed as a truck route but it is neither wide enough nor the electrical lines tall enough to deal with the loads. The loads I'm talking about are similar to those Commissioner Rehbein talked about: we have long loads, overwidth loads, hazardous material that are coming through downtown Sidney because that is the federal highway and that is the only way to get from south of Sidney to north of Sidney. I'm asking that you give consideration to a bypass for two reasons: one, that we flow the heavier traffic that doesn't want to stop in town, around downtown, and two, for a safety issue. We have the most popular and most used park on Central, we have a junior high that sits on Central and all our downtown retail businesses are there. Since free trade with Canada has become more prevalent, we have seen lots of long and overweight loads coming through downtown. Since the third oil boom, we are seeing a lot more traffic coming downtown. The FAA is moving the county road parallel to the airport away; and because of that, one mile of the approximately three mile bypass would be constructed by the FAA and the county. We have some of the right-of-way there already. He presented papers to Chairman Kennedy for the record.

Chairman Kennedy asked if there were any other public comments.

Lynch said Senator Sam Kitzenberg wasn't able to be here, and asked that we provide the following information to the commission. He wanted to make sure you're aware of Senate resolution 3. Lynch provided the commission copies of the resolution. This originally started as a bill but became a resolution for obvious reasons: project decisions are the commission's to make, and the 59th legislature understands and appreciates that. The resolution states that "the department of Transportation be encouraged to improve portions of the road between Scobey and Wolf Point by widening it to meet standards for a two-lane road and reengineering it to reduce its dangerous sharp turns." That's what we're going to do. It'll be part of our same pavement management process; it'll be evaluated as the other

projects are evaluated and brought back to you. The resolution says by no means that this has to be done, but we need to be encouraged to look at it. Lynch also provided copies of a letter from a resident of the area to Senator Kitzenberg and Lynch's response as requested by the Senator.

Senator Kitzenberg wanted to ask us how far along we are on the *Culbertson-Raymond* project. Right now we have a feasibility study that's studying the road (US 2) from the North Dakota border to Culbertson. As you know, we had a record of decision (ROD) in the Havre area *not* to build a four-lane highway that caused some controversy up there. The record of decision is supported by the Federal Highway Administration, the EPA and the Corps of Engineers, and it dictates what kind of highway we can build up there. We have looked at other portions of Highway 2 and where a four-lane highway might be feasible. Right now, there have been changes in the area because of the oil boom. In this federal reauthorization bill, there is something in there about a corridor. It's been called the Teddy Roosevelt corridor, formerly the Heartland corridor, and will run from Mexico through South Dakota, into North Dakota, then north out of Williston into Canada. North Dakota has agreed to change the direction of that corridor to travel westbound on Highway 2 into Culbertson, then north up to Regina, Canada. There are some things changing in eastern Montana that may allow the federal government and our communities to re-look at lane configurations. That's about as far as we are in our progress on a four-for-two. What we were told by Federal Highways is we need to get some sort of feasibility study which identifies that something has changed significantly from the last record of decision that we got on *Havre-East*. We feel confident that there has been some changes and we're going to take a look at it. There is no guarantee. One thing the Montana Department of Transportation can't do is predetermine highway design. That's something that has to go through the NEPA process and the community needs to be involved in that process. MDT must support the process and follow the recommendations that are the outcome of the environmental process.

Commissioner Espy said that if Senator Kitzenberg were present, she would like to remind Senator Sam that we did continue to work on Highway 2 even though he threw some severe obstacles within the original bill in our way that prevented us from doing some work that we would have done and we're very happy that he sees the need and encouraging us to do this at this time.

Lynch said we have conversations with Senator Sam and he understands that reconstruction on Highway 2 needs to go forward so we can address safety issues. To have a limited designation of a particular width hold up needed safety construction isn't responsible, and I know he agrees with me on that.

Agenda item 10: Letting dates for 2006

Frazier presented the letting dates proposed for 2006: January 26, February 23, March 30, April 27, May 25, June 22, July 20, August 17, September 21, November 2, and December 7.

Commissioner Griffith moved to accept staff recommendations to approve the letting dates proposed for 2006; Commissioner Espy seconded the motion. All five commissioners voted aye.

Agenda item 11: Letting lists

Frazier said we distributed a letting list for the remainder of this year. The July letting was cancelled for financial reasons and projects will be moved to the August letting.

Commissioner Espy moved to accept staff recommendations to approve the lettings lists presented; Commissioner Kottel seconded the motion.

Currie said we have been working very hard this year during all the extensions of TEA-21 to try and manage the amount of advanced construction that we carry because of the lack of federal obligation authority. If you recall, particularly the two commissioners that were on board last year, we were running about \$20 million a year ago. There were some reasons for that that happened last federal fiscal year in terms of Montana not getting Federal-aid we

thought we were going to get. Our goal this year was to *not* go further into advanced construction (AC) as a result of not having a highway bill. We are currently about \$20-22 million into it. We were able to do that by earlier in the year, moving \$25 million from this year's projects into next year. We delayed the July letting. So we've been able to maintain that balance of about \$20-22 million. We are going to go ahead with the August and September letting, which is worth about \$36 million. Now it looks like we're going to have a federal highway bill and it looks like we're going to have sufficient funding but we're not going to see obligation authority flowing to the state right away. FHWA anticipates some confusion with the funding coming in the middle of the year, along with new categories of funding and some other categories falling away. That's all going to be have to be reconciled before the money starts flowing. The bottom line is even if the bill passes this week, as hoped, it will probably be two months before we see any funding. I want the commission to be aware that by going forward with the August and September lettings that we are, for a period of time, going to have to advance construct those lettings. What I've been trying to do is manage this balance to around a \$20 million level through this fiscal year. I expect the AC will jump to about \$58 and 60 million simply because of the timing of the federal obligation.

All five commissioners voted aye.

Agenda item 12: Certificates of completion

Frazier presented certificates of completion for projects we were able to final out in April and May.

Commissioner Espy moved to accept staff recommendations to approve the certificates of completion for April and May 2005; Commissioner Kottel seconded the motion. All five commissioners voted aye.

Agenda item 13: Project change orders

Commissioner Howlett moved to accept staff recommendations to approve the project change orders as presented; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Agenda item 14: Liquidated damages

\$6,923 assessed on project CM 5203 (11), CM 5224(2), CM 5225 (4) *Urban Seal & Cover – Great Falls* (United Materials of Great Falls, Inc.)
\$5,343 assessed on project IM 90-7(85)340 *1km E of Jct US 89–E* (Riverside Contracting Inc. of Missoula)

The commission took no action therefore the liquidated damages stand.

Agenda item 15: Re-bid project on Secondary 323

Frazier said the project we toured yesterday on the bus is the one where we had to terminate the contract. We would like to let out to bid the remaining work on that project. Our staff has been working on getting everything ready. Frazier proposed to do a two-week advertisement on the project, beginning tomorrow. To expedite the award of the project, we have several options available; we would recommend you delegate authority to the chief engineer to award the project. We would like to get to work as soon as possible and get the road prepared for winter.

Commissioner Griffith asked if state law requires a specific advertising period of time. Reardon said it does not; we have done two-week advertising before. In any event, we can easily identify these as having special circumstances. If we don't get this road done before the snow hits it, these people are going to have a real problem. Most of the contracting community has knowledge of this, and I believe the district administrator, Ray Mengel, will be having a pre-bid conference.

Commissioner Espy moved that we move rapidly to move the project forward and award the project via telephone poll by the commission secretary; Commissioner Griffith seconded the motion. Chairman Kennedy suggested amending the motion to delegate authority to Chief Engineer Loran Frazier to award the project. Commissioner Espy withdrew the motion and amended it. Commissioner Griffith seconded the amended motion. Chairman Kennedy asked Frazier to let the commission know when the project is awarded. All five commissioners voted aye.

Commissioner Griffith asked if the commission needed to do anything regarding the termination. Reardon said the specifications allow MDT to terminate the project, which we have done.

Agenda item 16: Commission discussion

Update on the work of the governor's office in regards to tribal relations

Lynch said the GAIN council, formed by the governor to deal with Indian issues, is looking at MOUs out there on alcohol, taxes, tobacco and gasoline. As you know, we have agreements with the tribes so that they are not doubly taxed. MDT is unique in that we have our own revenue department tax collecting entity for the gas taxes. There are agreements that refund taxes collected from Indian tribal members on Indian reservations. Some of those agreements are expiring, some of them are being modified. There is a public hearing right now on the Blackfeet to discuss gasoline, alcohol and tobacco agreements and how the tax revenues will be disbursed back to that reservation.

Another issue that's starting to come up and being discussed is gaming. There are several other issues, such as water rights with the Salish & Kootenai.

The GAIN council was formed by the governor and I think it was a very good move. Reservations deal with so many different agencies within the state, and agencies may have somewhat of an overlap which can be very confusing. Another thing that has come up as a result of the work of the GAIN council is the issue of authority, and having discussions with the appropriate parties in the tribe. The GAIN council has brought this to a focus, so tribes aren't wasting energy talking to the wrong people and the state's not wasting energy talking to the wrong people.

Similar to that issue, we had a meeting with the Montana Contractors' Association and the Ironworker's union, and raised issues of Indian employment off the reservation. We have two issues with Indian employment on the reservations. One is getting them employed on the reservations but the construction industry's work is not solely on reservations, and what is it we that we and they can do to promote and encourage Indian employment off the reservation. It's important that we understand the Indian way in employment but it's equally important that they understand the non-Indian way; we have to find some place in the middle. In my conversations with the Montana Contractors' Association, they are always looking for qualified people, and in a lot of cases they are also willing to train. I think we have a potential workforce on the reservations for future employment and job opportunities. We just have to get over the hurdle of trying to find opportunities for them *off* the reservations. That is something that the GAIN council will probably pick up after they get over some of the other hurdles facing them right now.

Chairman Kennedy asked who was on the GAIN council. Lynch the council is primarily comprised of members of the governor's cabinet.

Commissioner Espy said she is concerned about moving boundaries when it comes to employment; I don't think that is a good answer to this problem. I think training is. I think that the contractor's association today is a product of the importance of training, and the willingness to help do that, along with what the state is willing to do, is where we are going to make the improvement. They will be employed if they are trained.

Update on reauthorization

Lynch explained that the term "below the line" means the amount that does not include earmarks. The entire bill is valued at \$286 billion, and, with the formula that Montana gets,

we expect to receive about \$355 million annually. Something new in this bill that is good for us, is that our share of trust fund (0.09758%) is locked in throughout the entire life of the bill. That's the highest it has ever been. We have that for the full remaining five years. We will have to go through this all over again in five years. What we learned in the last reauthorization is that without a locked share, we started high and went down. I think part of what has held up this reauthorization is that the donor states' incentive to get the bill passed wasn't strong: as the donee states' shares were continuing to go down, the donor states' shares were going up. The longer the extensions continued, the more money they got.

You have probably heard the number \$2.3 billion. Under our core – our “below the line” contribution to the state of Montana under this bill will be \$1.8 billion. That will get us roughly \$355 million annually. It's going to start low – \$335 million – and ramp up to \$374 million by the end (these are estimates.)

Looks like we will receive about \$216 billion in “above the line” monies. These are earmarks. If you look an earmark amount, for example \$10 million for Alzada to Ekalaka, the state of Montana doesn't get \$10 million. We get one fifth of \$10 million this year, we get one fifth of \$10 million next year, and so on. It comes in increments. This is where Sandy Straehl in our office really needs to be commended because she worked very hard with the Baucus delegation to make sure that the earmark language was written broad enough. Not only does she need to be congratulated from us, but also from Washington, North Dakota, South Dakota, and several other states that really benefited from our expertise. You can't write reauthorization for one state, and her due diligence in working on the wording of this bill. What that allows is some flexibility and acknowledgement that you can't build something like Shiloh Road in one-fifth increments.

The state of Montana is going to receive a 0.4 percent increase in funding on this reauthorization versus the last one. That's very significant when you average the other states in the country, they're getting about a 30 percent increase. Montana did very well in this reauthorization. This was in part due to the hard work from Kathy Ruffalo and Sarah Bond in Senator Baucus' office.

Most of our earmarks are projects that this or a previous commission have already approved. That's a good thing; what some states are facing is they're going to get earmarks but they have no authorization to spend them yet. In our case, we have projects that we're going to receive earmarks for that 1) meets the requirements of our asset management system, so we know we're spending money on roads that need to be fixed, and 2) it allows us to spend the earmark in a short period of time rather than getting an earmark then waiting several years to spend it. We're fortunate the way the earmarks are set up under this bill, and the cooperation between our office and the Senator's office in naming projects could actually be built and projects that were approved but we were short of funding for. That's a real win for Montana.

Transit in Montana will be receiving more funding. As our demographics change, public transportation is becoming more and more important. A lot of the transit legislation in the past has been geared to the East, in moving volumes of people and not necessarily addressing rural and low volume transportations. I think we will be picking up something like \$5 million more for transit.

It's going to be a difficult bill for us to administer, but we'd rather deal with that than a lesser amount and a lack of funding. By waiting this time period, we will see a greater amount of money coming to the state.

Upcoming meetings/workshops of interest

- ⇒ AASHTO meeting is September 16-19 in Nashville, Tennessee
- ⇒ Meeting with Liberty County Commissioners on August 3 at 9am
- ⇒ July 28, 2005 – Governor's cup at Grouse Mountain Lodge in Whitefish
- ⇒ August 3 – traffic safety committee meeting (part of building the comprehensive traffic safety plan) starts at noon at the Great Northern Hotel in Helena

- ⇒ August 10 – meeting in Red Lodge to provide the public an update on the progress in repairing the Beartooth
- ⇒ August 18-19 – AGC summer outing
- ⇒ August 25 – driver appreciation day (recognition for truck drivers at MCS weigh stations). Commissioner Espy noted that Powder River County hosts a free lunch for truck drivers that day, and has for several years.

Update on the Beartooth

We have a good chance of meeting or beating both our October 15 deadline and our budget. There are two locations that are holding material that could release in the future; we are determining if that meets the criteria for ER funding so that we can finance the building of covers over the road at those points so that any slide material will flow over the top of the structures, rather than blocking or damaging the road.

Addition to letting lists

Frazier later said he had failed to mention during the letting list item earlier that we have three bonded projects coming up on US 93 in the November letting: *Medicine Tree to vicinity of Red Horn Road* (just north of St. Ignatius), *Vicinity of White Coyote Road to South of Ravalli*, and *Mud Creek structures*.

Commissioner Howlett moved to accept staff recommendations to approve the addition of these projects to the lettings; Commissioner Griffith seconded the motion. All five commissioners voted aye.

Chairman Kennedy asked if bidding on roads was a subject that should come to the GAIN council. Lynch said they are there as a clearinghouse for information and issues. They have no intention of taking over directors' or commissions' responsibilities. Chairman Kennedy suggested we should have more discussion on the issues. Commissioner Howlett offered a follow-up observation regarding the complexity of coming to agreement with the tribes on projects: for example, it took 20 years to come to an agreement regarding the projects on US 93. I think the principles we learned in that process have be incorporated as a practice. That is, when we deal with the tribes on, for example, on culturally sensitive things, there may not always be an understanding on the part of the contractors' association or the state why the tribe asks that certain areas be left alone. They may not want to publicly reveal them. What we have to do is accept the legitimacy of the position they've taken. To reject those issues is to invite delay. The issues are very complex. I've sat as a member of the tribal council when we negotiated US 93 and it was very, very difficult to even come to a point where we could trust each other in terms of discussion. Trust was an important part of the process.

Agenda item 17: Public comment

Cary Hegreberg went on record from the contractor's association vantage point that, if time were of the essence, in regard to the Morning Star Drive project, that project could have easily been built over a year ago if the tribe would have signed the MOU allowing the department to go to bid following the commission's decision a year ago. We'd like to follow up in asking FHWA, in overseeing the transfer of these funds, to impose some of the same guidelines, restrictions and expectations that would hold the state of Montana accountable for in awarding contracts to private contractors. We ask that provisions for liquidated damages and incentives are adhered to.

On our plate, we have been working with the department and the Montana Association of Counties (MACo) to look at the issue of haul roads (using county roads during construction) and the damage that can occur to county roads in the process of building state highways. We are in the process of hammering out some agreements with MACO, with the assistance of MDT, on some best practices and outlining expectations for approaching the use of county roads and how contractors should work with counties and how counties should expect contractors to rebuild those roads back to original condition. We're very encouraged by the cooperation we are enjoying and we intend to have a letter out to the contractors and counties offering these best practices as guidance, understanding that we may need to seek

legislation in the future. It's an issue that's been of some contention and we're trying to get it resolved internally so that everyone knows what's expected.

On a similar line, there are some issues that are popping up all over the state related to moving utilities associated with construction projects. Many of our member companies are experiencing severe difficulty getting projects completed on time because of utilities (power lines, fiber-optics, gas lines, etc.) not being moved in a timely basis. We will be working with the telecommunication companies and rural utilities to try and get some cooperation. In the meantime, you may see some claims and litigation.

There was a comment made earlier today about terminating contracts that prompted some concern from Mr. Fuglevand and I. It is interesting to us that the commission awards projects but the department can terminate them. In this particular case, it is an out-of-state contractor whose contract was terminated, and potentially one of our MCA members will receive the contract. I suggest this is something that be looked at. What is the due process for a contractor? Is there any recourse? Those kinds of issues.

Hegreberg congratulated the commission and the department on the work that's happening on the Beartooth.

Erin Lutts, Mid-Rivers communication – Highway 323 steering committee

Erin thanked the commission for the visit and for their support of Highway 323. It will complete a north-south corridor in eastern Montana, which will be a huge boon to this area, from public safety benefits to many others. We hope you will keep this on your priority list.

Donny Rieger, Fallon County Commissioner

Donny Rieger expressed his appreciation and that of the Fallon County Commission to the Transportation Commission for the visit and invited them back.

Next meeting

The next meeting will be September 7-8 in St. Mary. The conference call on Monday will be cancelled.

Director Lynch, on behalf of the Montana Department of Transportation, again thanked the people of Plevna for their gracious hospitality last evening and for the wonderful meal.

=> Chairman Kennedy suggested sending a thank you letter and will work with the commission secretary on that.

The meeting adjourned at 11:56 am.

Bill Kennedy, Chairman
Montana Transportation Commission

Jim Lynch, Director
Montana Department of Transportation

Lorelle Demont, Secretary
Montana Transportation Commission